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No. 88-30

In The
Supreme Court of the United States
October Term, 1988

THE HORN & HARDART COMPANY,
Petitioner,

v.

NATIONAL RAILROAD PASSENGER CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONER

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1. Respondent Amtrak seeks to justify the exercise of jurisdiction by the District Court on the ground that a notice of appeal only divests a District Court of jurisdiction over matters involved in the appeal.[1] According to Amtrak, the first round of litigation before the District

[1] The statement required by S. Ct. Rule 28.1 appears at Pet. ii.

Court did not involve Amtrak's claims for holdover damages and attorneys' fees, and therefore the District Court could retain or reserve jurisdiction over those claims, despite the appeal. *See* Resp. Br. 7-9. The District Court's initial decision, however, disposed of the *entire case*. Since Amtrak had not raised any monetary claims in the District Court, there could have been no jurisdiction over any monetary claims for the District Court to retain or reserve. The entire case went up on appeal, and nothing was ever remanded to the District Court for further proceedings. From the District Court's perspective, the case should have ended with the filing of the notice of appeal.[2]

Amtrak also relies on Section 2202 of the Declaratory Judgment Act as authority for the District Court's "retention" of jurisdiction. Resp. Br. 9. As pointed out in the Petition, however, this argument flies in the face of the basic rule that the Declaratory Judgment Act did not

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[2] *See* Pet. 11-12, 15 n.8, and cases cited. Amtrak relies on *Henry v. Farmer City State Bank*, 808 F.2d 1228 (7th Cir. 1986), noting that the Court of Appeals in that case stated that defendants erred in seeking an injunction from the District Court after the notice of appeal, but that defendants could refile later with the District Court, "which will again have jurisdiction over the case after our decision is final." *Id.* at 1241 n.8. *See* Resp. Br. 8-9 & n.6. Amtrak neglects to point out, however, that jurisdiction would return to the District Court in that case because —as the Court of Appeals itself noted—the District Court "has retained jurisdiction over this case" to consider certain matters "pending the outcome of this appeal." *Id.* at 1232 n.3. That was *not* true here, and therefore the general rule announced in *Henry* is fully applicable—that "[i]f an appeal is taken from a judgment which determines the entire action, upon the filing of the notice of appeal the district court loses its power to take any further action" and that "[f]urther proceedings in the district court cannot take place without leave of the court of appeals." *Id.* at 1240.

enlarge the jurisdiction of the federal courts in any way. *See* Pet. 13-14. Amtrak notes that subject matter jurisdiction persisted on the basis of diversity, but that is wholly beside the point. The issue is jurisdiction in the trial court after the filing of a notice of appeal—not subject matter jurisdiction—and the ruling below that the Declaratory Judgment Act reserved jurisdiction in the District Court after an appeal of the entire case contravenes this Court's holding that "the operation of the Declaratory Judgment Act is procedural only." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937).

2. Amtrak, like the court below, shifts gears when it comes to considering whether its claims for further relief are within the scope of Section 2202. With respect to jurisdiction, Amtrak argues that the District Court somehow "retained" jurisdiction over Amtrak's then-unasserted claims because those claims were *not* at issue in the first round of litigation before the District Court. Resp. Br. 8. At the same time, however, Amtrak argues that its claims are within the scope of Section 2202 precisely *because* the rulings in the first case entitled it to the further relief it belatedly sought. *See* Resp. Br. 11. Further relief under Section 2202 is only available against an adverse party "whose rights have been determined" by the prior declaratory judgment. 28 U.S.C. § 2202. If Amtrak is correct that its claims were not involved in the first case before the District Court—and thus, according to Amtrak, jurisdiction was not lost when that entire case was appealed—it is difficult to see how Horn & Hardart's rights with respect to those claims could "have been determined" by the judgment in that case.

Amtrak argues that further relief under Section 2202 need only be "proper," and we agree. But the further relief—whether proper or necessary—must still be "based on a declaratory judgment" and awarded only "against any adverse party whose rights have been determined by such judgment." 28 U.S.C. § 2202. The courts have interpreted this statutory language as limiting the further relief under Section 2202 to relief designed to effectuate the prior declaratory judgment—whether "necessary," as in the case of an injunction when the adverse party ignores the declaration, or "proper," when the declaration conclusively establishes the right to damages. *See* Pet. 17-23, and authorities cited. Here, the further relief was not proper because the right to damages was not established by the prior declaratory judgment. As Amtrak itself admits, its claims for damages were not even at issue during the prior proceeding. Resp. Br. 8.

3. Amtrak split its claims, with the result that what should have been one case became two, with two complete rounds of litigation before the District Court and the Court of Appeals. There is no doubt that Amtrak sought affirmative relief in the first round, urging the District Court to enter a declaratory judgment in its favor. *See* Pet. 26. Amtrak should have raised its claims for monetary relief at the same time. Instead, Amtrak sat on those claims not only throughout proceedings in the District Court but throughout an appeal of the entire case to the Court of Appeals, and an affirmance—without remand—by that court. Only then did Amtrak raise its new claims, claims that arose from the same cause of action previously litigated. *See* Pet. App. 24a ("Once again, Amtrak does not contest this conclusion").

Amtrak argues that this case provides "a good example of the efficacy and efficiency" of its interpretation of the preclusion rules, Resp. Br. 20, but it is difficult to see how two complete rounds of litigation can be considered more efficacious and efficient than one. Amtrak contends that the Declaratory Judgment Act "intentionally allows a greater measure of claim splitting than in other types of cases," Resp. Br. 15, but it is precisely in declaratory judgment proceedings that the court must consider whether a declaration will finally settle the controversy between the parties before awarding such discretionary relief. *See* Pet. 27-28. It is for this very reason that the courts have construed the "further relief" permitted by Section 2202 narrowly, as limited to relief that effectuates the prior declaration.

The expansive view embraced by the court below—with Section 2202 seen as a broad exception to normal rules of jurisdiction and preclusion—creates uncertainty in areas in which the rules "should above all be clear." *Budinich v. Becton Dickinson & Co.*, 108 S.Ct. 1717, 1722 (1988). Just last Term this Court emphasized the "age-old rule that a court may not in any case, even in the interest of justice, extend its jurisdiction where none exists." *Christianson v. Colt Indus. Operating Corp.*, 108 S.Ct. 2166, 2178 (1988). *See also Torres v. Oakland Scavenger Co.*, 108 S.Ct. 2405 (1988). This Court should grant the writ to reconfirm the jurisdictional significance of a notice of appeal, to resolve the growing confusion in the Circuits over a District Court's jurisdiction after disposition of a case,[3] and to enforce the prohibition against claim-splitting.

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[3] See Pet. 16 & nn. 9 & 10 (citing conflicting authority).

CONCLUSION

For the foregoing reasons, and those in the Petition, this Court should grant the writ and reverse the decision below.

Respectfully submitted,

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